

## **REMARKS/ARGUMENTS**

This Amendment is submitted in response to the Office Action mailed November 3, 2008. At that time claims 1-60 were pending in the application. Claims 28-60 have been withdrawn from consideration, as being drawn to a nonelected invention. Claims 1-27 were rejected. Claims 1 and 5 are hereby amended. Reconsideration of the application is respectfully requested.

### **Claim Rejections – 35 U.S.C. § 112**

Claim 5 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 has been amended to depend upon claim 4, which provides antecedent basis for the limitation “the arm.”

### **Claim Rejections – 35 U.S.C. § 102**

Claims 1-13 and 15-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaba (U.S. Patent No. 5,697,907).

However, it is respectfully submitted that claims 1-13 and 15-27 clearly and patentably distinguish over Gaba.

#### **Claim 1**

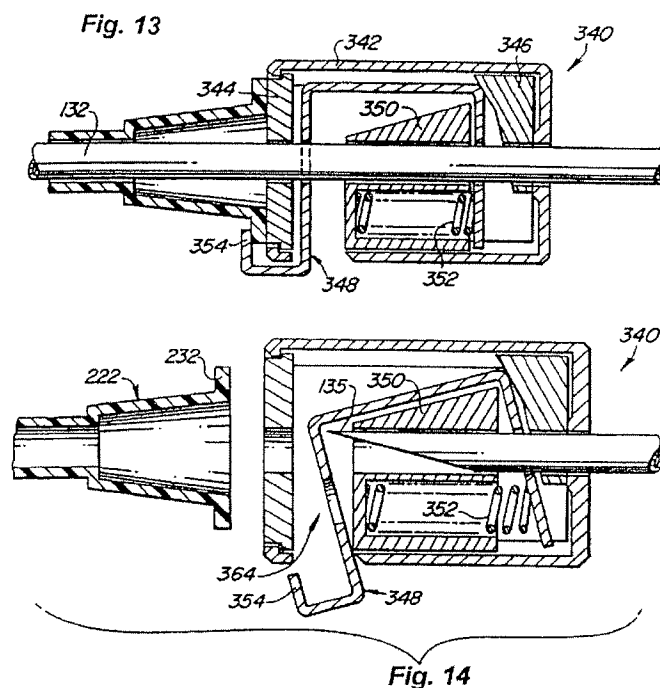
Independent claim 1 recites, *inter alia*,

A medical needle shield apparatus comprising . . . [a] binding member including at least one drag inducing member such that the at least one drag inducing member engages the needle during slidable receipt of the needle to create a drag force with the needle, the drag force and shield facilitating rotation of the binding member relative to a longitudinal axis of the needle such that the binding surfaces engage

the needle to prevent slidable movement of the needle in the extended position of the shield, . . . the binding member further including a binding member reset surface selectably alignable with a reset surface, wherein the reset surface is configured to deflect the binding member reset surface when contact is made and to cause the binding surfaces to disengage the needle and allow slidable movement of the needle.

Gaba fails to disclose at least the foregoing limitations of claim 1, and thus claim 1 is not anticipated by this reference.

Gaba discloses a safety catheter 340 having a housing 342 with a front guard body 344. A housing block 346 and a housing stand 350 extend upwardly and/or inwardly from the walls of the housing 344. A retainer 348 has a hook 354 extending out of the housing 344 to engage and hold the catheter to the housing. A spring 352 urges the retainer 348 to the rear of the housing 348. When the point 135 of the needle is drawn behind the front hole 364 after withdrawal from a patient, the retainer 348 pivots or shifts, freeing the hook 354 from the catheter which can now be separated from the housing 344. The spring 352 shifts the retainer 348 into a locking position, as shown in figure 14 below. See Gaba column 5, lines 41-67 and column 6, lines 1-2, figures 13 and 14 (reproduced below).



Gaba does not teach or suggest a medical needle shield apparatus comprising a binding member including at least one drag inducing member such that the at least one drag inducing member engages the needle during slidable receipt of the needle to create a drag force with the needle, the drag force and shield facilitating rotation of the binding member relative to a longitudinal axis of the needle such that the binding surfaces engage the needle to prevent slidable movement of the needle in the extended position of the shield, the binding member further including a binding member reset surface selectably alignable with a reset surface, wherein the reset surface is configured to deflect the binding member reset surface when contact is made and to cause the binding surfaces to disengage the needle and allow slidable movement of the needle.

Therefore, the Applicants respectfully submit that claim 1 is not anticipated by Gaba, and thus request that the rejection of this claim under 35 U.S.C. § 102(b) be withdrawn.

#### Claims 2-13 and 15-27

Each of claims 2-13 and 15-27 depends from claim 1, either directly or indirectly, and thus includes all the limitations of claim 1. Therefore, for at least the reasons discussed above with respect to claim 1, Gaba fails to anticipate claims 2-13 and 15-27. The Applicants thus respectfully request that the rejection of claims 2-13 and 15-27 under 35 U.S.C. § 102(b) be withdrawn.

#### **Claim Rejections – 35 U.S.C. § 103**

Claim 14 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Gaba in view of Dombrowski et al. (U.S. Patent No. 4,978,344). However, it is respectfully submitted that claim 14 clearly and patentably distinguishes over Gaba in view of Dombrowski. In particular, the combination fails to teach every element of claim 14.

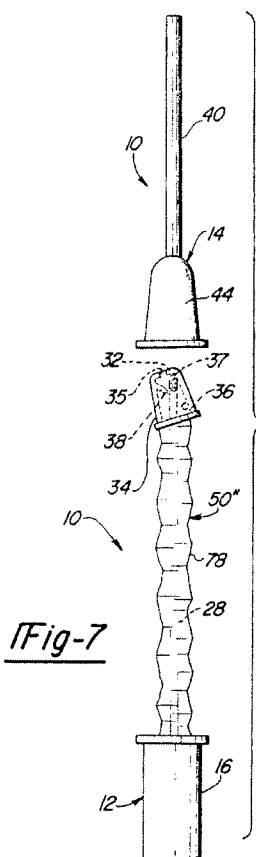
Claim 14

Dependent claim 14 recites, *inter alia*,

A medical needle shield apparatus as recited in claim 1, further comprising a plurality of shields.

Claim 14 depends from claim 1 and thus includes all the limitations of claim 1. The combination of Gaba in view of Dombrowski, as proposed in the Office Action, fails to establish a *prima facie* case of obviousness with respect to claim 14.

Dombrowski discloses a safety catheter assembly 10 having a cap 34 for capping the distal tip 32 of a needle 28. The cap 34 is reversibly seated in engagement with a catheter assembly as the needle portion 28 is disposed within a passageway of the catheter assembly whereby removal of the needle portion 28 from the passageway of the catheter assembly moves the cap 34 to the extended position capping the distal tip 32 as the cap 34 is unseated from the catheter assembly. The cap 34 is attached to the hub 16 by a tether means 50". See Dombrowski, column 5, lines 36-63, figure 7 (reproduced below).



Neither Gaba alone or in combination with Dombrowski teach or suggest a medical needle shield apparatus comprising a binding member including at least one drag inducing member such that the at least one drag inducing member engages the needle during slidable receipt of the needle to create a drag force with the needle, the drag force and shield facilitating rotation of the binding member relative to a longitudinal axis of the needle such that the binding surfaces engage the needle to prevent slidable movement of the needle in the extended position of the shield, the binding member further including a binding member reset surface selectably alignable with a reset surface, wherein the reset surface is configured to deflect the binding member reset surface when contact is made and to cause the binding surfaces to disengage the needle and allow slidable movement of the needle.

The Applicants thus respectfully request that the rejection of claim 14 under 35 U.S.C. § 103(a) be withdrawn.

### **CONCLUSION**

Applicants respectfully assert that claims 1-27 are patentably distinct from the cited references, and request that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

/Paul S. Evans/  
Paul S. Evans  
Reg. No. 36,130  
Attorney for Applicant(s)

Date: March 2, 2009

STOEL RIVES LLP  
One Utah Center  
201 South Main Street, Suite 1100  
Salt Lake City, UT 84111  
Telephone: (801) 578-6933  
Facsimile: (801) 578-6999